

Miante CIV Theresa N

From: Mianta CIV Theresa N
Sent: Tuesday, September 08, 2009 2:52 PM
To: M_HQMC_MCFCS_Civilian; M_HQMC_MCFCS_Directors/Deputies;
M_HQMC_MCFCS_Enlisted; M_HQMC_MCFCS_Officer
Cc: M_HQMC_LB
Subject: APM 09-21 Reverse Freedom of Information Act (FOIA)
Signed By: theresa.miante@usmc.mil

All,

Background: A legal decision was issued 28 August 2009 in a reverse FOIA case, in which the District Court for the District of Columbia blocked government disclosure of a contractor's unit prices. This decision can be read in its entirety at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2001cv1549-67

To summarize this decision, the Air Force decided to disclose an incumbent contractor's pricing as a result of a FOIA request. The plaintiff in this case (the incumbent contractor) seeks to prohibit the Air Force from doing so, in that, ".such disclosure (of its prices) would cause it substantial competitive harm, therefore bringing it within the scope of FOIA Exemption 4." The Air Force found the plaintiff ".had failed to demonstrate adequately substantial competitive harm." The decision states that while the burden is on the plaintiff ".to produce evidence indicating that release of pricing information would be competitively harmful. it need not demonstrate precisely how the release of the information would cause competitive harm."

Policy: Pursuant to MAPS 24.203 you are reminded that all FOIA requests shall be coordinated through the Command's FOIA Coordinator. Marine Corps implementation is governed by SECNAVINST 5720.42F which provides policy and procedures for implementing guidance and promotes uniformity in the DON FOIA Program. Marine Corps FOIA On-Line provides general information about the USMC FOIA Program and answers some basic questions frequently asked by the public.

Procedures: Recommend subject decision is read in its entirety and ensure all FOIA requests are coordinated through the FOIA Coordinator to ensure only appropriate information is released.

POC: Please direct any questions with regard to the execution of the policy/procedures provided herein to Cathy Collins at cathy.collins@usmc.mil or at 703-695-6590 x2546.

Respectfully
Theresa Mianta